

Access to remedy

1. For binding treaty to be practically meaningful, it needs to improve (a) redress for victims (b) deterrence against HR violations.

2. Any binding treaty should contain provisions that will deliver the greatest practical benefit. Obtaining access to justice locally is obviously crucial but practical obstacles in developing countries are generally huge that overcoming the challenges in the near future seems generally unrealistic.

3. From my perspective any treaty should focus on improving access to remedy in MNC home states where there is real potential, in practice, to fill enforcement gaps.

4. As regards civil cases there are interrelated legal, procedural and practical barriers to access to remedy. Important to bear in mind that cases against MNCs are complex and costly and that MNCs are invariably represented by armies of the best lawyers and experts who are determined to fight tooth and nail to defend. This combined with the legal barriers make it difficult for victims to secure effective legal representation. A treaty which reduces these barriers will decrease the risk for claimants; lawyers and enhance access to remedy.

5. The draft document refers to the following key legal barriers:
 - (a) jurisdiction esp FNC outside the EU

 - (b) corporate veil; discussed DDD earlier

 - (c) access to documents - need proper access in order to prove role of MNC parent reversal of burden of proof

 - (d) class actions By enabling collective claims to be pursued by one or a small number of representative claimants, can dramatically reduce costs, time and resources. This is vitally important in mass cases comprising small individual claims.

(e) draft also includes ref to Legal aid

6. The draft does not mention the following barriers which are equally important

(a) level of damages; Art 15 Rome II encourages; double standards; - Treaty could stipulate MNC home state damages

(b) abolition of loser pays in HR cases

(c) proper costs recovery for victims; lawyers; otherwise they won't take risk